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Subject: Cantwell - Defense Revision of "Provocation Not a Defense" Instruction
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You have heard evidence that Victim 1 and others engaged in behavior that disrupted the defendant's live call-in radio show. You also heard evidence that Vic Mackey or others may have engaged in behavior that disrupted the defendant's website. Evidence of provocation may be relied upon by you to determine whether the government has met its burden to prove beyond a reasonable doubt every element of each of the charges in this case. If you find that the government has met its burden of proving beyond a reasonable doubt every element of the charges, however, then evidence of provocation does not negate the defendant's criminal culpability.

You may consider evidence of provocation for the purpose of understanding all the circumstances surrounding the making of the communication, including, for example, the language, specificity, and frequency of the communication; the context in which the communication was made; the relationship between the defendant and Victim 1; Victim 1's response; any previous communications between the defendant and Victim 1; and whether you believe the person making the communication was serious, as distinguished from mere idle or careless talk, exaggeration, or something said in a joking manner. You may not consider evidence of provocation for any other purpose.

Sincerely,

/s/ Jeff Levin

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